

EDMUND G. BROWN JR.
Attorney General of the State of California
RANDALL P. BORCHERDING
Supervising Deputy Attorney General
KAREN W. YIU, State Bar No. 230710
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5385
Fax: (415) 703-5480
Email: Karen.Yiu@doj.ca.gov

Attorneys for Defendant Franchise Tax Board

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

**JESUS MARQUEZ, OLGA MARQUEZ, RAMON
MARQUEZ, JUANITA MARQUEZ, TAQUERIA
LOS PRIMOS, TAQUERIA LOS PRIMOS NO. 2,
LUIS GALINDO, MARTHA GALINDO, BANK OF
AMERICA, N.A., STATE OF CALIFORNIA
FRANCHISE TAX BOARD, STATE OF
CALIFORNIA EMPLOYMENT DEVELOPMENT
DEPARTMENT, STATE OF CALIFORNIA
BOARD OF EQUALIZATION, STATE OF
CALIFORNIA DEPARTMENT OF LABOR, SAN
MATEO COUNTY TAX COLLECTOR,**

Defendants.

CV 08-0891 CW

DEFENDANT FRANCHISE
TAX BOARD'S ANSWER TO
COMPLAINT

The Franchise Tax Board ("FTB") hereby submits its answer to the allegations of the Complaint as follows:

1. Answering the allegations of paragraphs 1, 3, 4, 5, 6, 7, 13 and 14, the FTB admits the allegations.
2. Answering the allegations of paragraphs 2, 10, 11, 16, 18, 19, 21, 22, 24, 25, 27, 28, 31, 33, 35, 37 and 38, the FTB lacks sufficient information or belief to answer the allegations

1 and, basing its denial on that ground, denies each and every allegation in paragraphs 2, 10, 11,
2 16, 18, 19, 21, 22, 24, 25, 27, 28, 31, 33, 35, 37 and 38 of the Complaint.

3 3. Answering the allegations of paragraph 8, the FTB admits the allegations except that
4 the FTB denies that defendant Taqueria Los Primos No. 2 is currently located at 376 Ellsworth
5 Avenue, San Mateo, California 94401. The FTB is informed and believes and based on such
6 information and belief alleges that the correct address of defendant Taqueria Los Primos No. 2 is
7 376 S. Ellsworth Avenue, San Mateo, California 94401.

8 4. Answering the allegations of paragraph 9, the FTB admits that the property subject to
9 the suit is 791 South Johnston Street, Half Moon Bay, California 94019. Except as expressly
10 admitted herein, the FTB lacks sufficient information or belief to answer the remaining
11 allegations, and, basing its denial on that ground, denies the remaining allegations.

12 5. Answering the allegations of paragraph 12, the FTB admits the allegations except that
13 the FTB denies that John Davies is the FTB's Chief Counsel. The FTB alleges that now
14 Geoffrey Way is the FTB's Chief Counsel.

15 6. Answering the allegations of paragraph 15, the FTB denies the allegation on the
16 ground that there is no California state agency titled the California Department of Labor. The
17 FTB alleges that the California state agency which regulates labor and employment issues is the
18 Department of Industrial Relations (DIR). The FTB further alleges that the DIR is located at 455
19 Golden Gate Avenue, 9th Floor, San Francisco, California 94102 and that the Division of Labor
20 Standards Enforcement is one of the divisions of the DIR. Additionally, the FTB lacks sufficient
21 information or belief to answer the allegation as to whether the DIR is made a party pursuant to
22 26 U.S.C. § 7403(b) in that it may claim an interest in the property described in paragraph 9 of
23 the Complaint and, basing its denial on that ground, denies the allegation beginning on line 5
24 with the words "and is made" and ending on line 7 with the words "paragraph 9."

25 7. Answering the allegation of paragraph 17, the FTB incorporates its respective prior
26 answers to paragraphs 1 through 16 as though fully set forth in this answer.

27 8. Answering the allegations of paragraph 20, the FTB incorporates its respective prior
28 answers to paragraph 1 through 19 as though fully set forth in this answer.

1 9. Answering the allegations of paragraph 23, the FTB incorporates its respective prior
2 answers to paragraph 1 through 22 as though fully set forth in this answer.

3 10. Answering the allegations of paragraph 26, the FTB incorporates its respective prior
4 answers to paragraph 1 through 25 as though fully set forth in this answer.

5 11. Answering the allegations of paragraph 29, the FTB incorporates its respective prior
6 answers to paragraph 1 through 28 as though fully set forth in this answer.

7 12. Answering the allegations of paragraph 30, the FTB admits the allegations beginning
8 on line 27 with the words "Pursuant to 26" and ending on line 1 with the words "Jesus and Olga
9 Marquez." Except as expressly admitted herein, the FTB lacks sufficient information or belief to
10 answer the remaining allegations in paragraph 30, and, basing its denial on that ground, denies
11 each and every remaining allegation.

12 13. Answering the allegations of paragraph 32, the FTB admits the allegations beginning
13 on line 6 with the words "Pursuant to 26" and ending on line 8 with the words "Ramon and
14 Juanita Marquez." Except as expressly admitted herein, the FTB lacks sufficient information or
15 belief to answer the remaining allegations in paragraph 32, and, basing its denial on that ground,
16 denies each and every remaining allegation.

17 14. Answering the allegations of paragraph 34, the FTB admits the allegations beginning
18 on line 13 with the words "Pursuant to 26" and ending on line 15 to 16 with the words "Jesus
19 Marquez and Ramon Marquez." Except as expressly admitted herein, the FTB lacks sufficient
20 information or belief to answer the remaining allegations in paragraph 34, and, basing its denial
21 on that ground, denies each and every remaining allegation.

22 15. Answering the allegations of paragraph 36, the FTB admits the allegations beginning
23 on line 20 with the words "Pursuant to 26" and ending on line 22 to 23 with the words "Jesus
24 Marquez and Ramon Marquez." Except as expressly admitted herein, the FTB lacks sufficient
25 information or belief to answer the remaining allegations in paragraph 36, and, basing its denial
26 on that ground, denies each and every remaining allegation.

27 WHEREFORE, defendant FTB, prays for the following relief:

28 1. That the tax liens of the United States be foreclosed against the real property of Jesus

1 Marquez, Olga Marquez, Ramon Marquez and Juanita Marquez and the real property sold.

2 2. That this Court determine the relative priorities of the liens of the lienholder parties to
3 this suit and order payment of the tax liens of the Franchise Tax Board from the proceeds of the
4 foreclosure sale of the real property of defendants Jesus Marquez, Olga Marquez, Ramon
5 Marquez and Juanita Marquez.

6 3. That the Franchise Tax Board be granted its costs.

7 4. For such other and further relief as the Court deems just and proper.

8 Dated: April 25, 2008

9 Respectfully submitted,

10 EDMUND G. BROWN JR.
Attorney General of the State of California

11 RANDALL P. BORCHERDING
Supervising Deputy Attorney General

12
13 /s/ Karen W. Yiu

14 KAREN W. YIU
Deputy Attorney General
Attorneys for Defendant Franchise Tax Board
15
16

17 40242633.wpd
SF2008401215
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **United States of America v. Jesus Marquez, et al.**

No.: **C08-0891 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 25, 2008, I served the attached **DEFENDANT FRANCHISE TAX BOARD'S ANSWER TO COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

David L. Denier
United States Attorney's Office - San Francisco
Tax Division, 9th Floor
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102

Robert A. Goldstein
Cindy Lan Ho
Law Office of Robert L. Goldstein
100 Bush Street, Suite 501
San Francisco, CA 94104

Todd M. Bailey
Tax Counsel
Franchise Tax Board
P. O. Box 1720, MS: A-260
Rancho Cordova, CA 95741-1720

Eugene Whitlock
San Mateo County Counsel's Office
400 County Center, 6th Floor
Redwood City, CA 94063

Ralph Roberts
Employment Development Department
Special Procedures Section, MIC 92S
P.O. Box 826880
Sacramento, CA 94280-0001

Victoria C. Baker
Board of Equalization - Legal Division
P.O. box 942879, MIC: 82
Sacramento, CA 94279-0055

Merly R. Dino
Special Procedures Section
Board of Equalization
P.O. Box 942879, MIC: 55
Sacramento, CA 94279-0055

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 25, 2008, at San Francisco, California.

Sylvia S. Wu

Declarant

/s/ Sylvia S. Wu

Signature

40246364.wpd
SF2008401215